



# NEWS RELEASE

CALIFORNIA SECRETARY OF STATE **BRUCE McPHERSON**

05:069

FOR IMMEDIATE RELEASE  
Wednesday, July 13, 2005

Contact: Nghia Nguyen Demovic  
Caren Daniels-Meade  
916-653-6575

## **Secretary of State Bruce McPherson Asks Court to Determine What Version of the Redistricting Initiative to Place on the Ballot**

*Chief Elections Official Seeks Swift Judicial Decision to Fulfill Constitutional Duties*

Sacramento – Secretary of State Bruce McPherson today announced that he has filed for declaratory relief seeking guidance from the court to make a determination on which version of the text of the redistricting initiative, Proposition 77, should be placed on the November 8 Special Statewide Election ballot. The suit was filed in Sacramento Superior Court.

“The people of California have a right to vote on qualified measures. Whatever the court decides, I will implement without reservation,” said Secretary McPherson. “This proposition as well as the other seven qualified measures is important as they affect people’s daily lives. And I am asking the court to resolve this issue as quickly as possible so that voters are given the chance to decide.”

Under California law, once the Secretary of State has received petitions certified by county elections officials as having been signed by the requisite number of voters, the petition is deemed to qualify and the Secretary of State shall issue a “certificate” to that effect to all local elections officials. This is not discretionary.

The Secretary of State has the constitutional duty to present to the voters the measures that have qualified to appear on the ballot by the signatures of the people. The requisite number of California voters has signed petitions asking that Proposition 77 be placed on the ballot in the form shown on the petitions. Without a court order directing him to do otherwise, Secretary McPherson has a constitutional duty to place on the ballot the version of the initiative that was included on the petitions, read and signed by more than 950,000 California voters.

The timing of the court’s decision is critical. As required by California law, qualified initiatives on the November 8 ballot must be on display for public viewing for 20 days beginning July 26 and ending August 15. It is imperative that the court rule in advance of July 26 so that the Secretary of State has direction regarding the public display of Proposition 77.

“My responsibilities in this matter are purely ministerial,” said Secretary McPherson. “I have tight deadlines to meet and I am asking for an immediate resolution from the court so I can do my job on behalf of the voters.”

-30-

1 KNOX, LEMMON AND ANAPOLSKY, LLP  
THOMAS S. KNOX, SB # 073384  
2 ANGELA SCHRIMP DE LA VERGNE, SB #166521  
GLEN C. HANSEN, SB # 166923  
3 One Capitol Mall, Suite 700  
Sacramento, CA 95814  
4 Telephone: (916) 498-9911  
Facsimile: (916) 498-9991

5 Attorneys for Respondent and Cross-Complainant  
6 BRUCE MCPHERSON, SECRETARY OF STATE FOR  
THE STATE OF CALIFORNIA

8  
9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

11 BILL LOCKYER, Attorney General of the State  
of California

12 Petitioner,

13 v.

14 BRUCE MCPHERSON, as the Secretary of  
State for the State of California; and GEOFF  
BRANDT, as the Acting State Printer with the  
Office of the State Publishing,

15 Respondents.

16  
17 BRUCE MCPHERSON, as the Secretary of  
State for the State of California,

18 Cross-complainant,

19 v.

20 BILL LOCKYER, Attorney General of the State  
of California; and GEOFF BRANDT, as the  
Acting State Printer with the Office of the State  
Publishing,

21 Cross-defendants.

22  
23 EDWARD J. ("TED") COSTA, SIDNEY S.  
NOVARESI, ARTHUR LAFFER, JIMMIE  
JOHNSON,

24 Real Parties In Interest  
25  
26  
27  
28

Case No. 05CS00998

**CROSS-COMPLAINT FOR  
DECLARATORY RELIEF**

**STATEWIDE ELECTION MATTER  
IMMEDIATE ACTION REQUESTED**

## INTRODUCTION

By this Cross-complaint, Respondent and Cross-complainant Bruce McPherson, in his official capacity as Secretary of State for the State of California, requests direction from this Court on a number of issues relating to the initiative measure, and materials pertaining to the initiative measure, designated as Proposition 77 (referred to by its proponents as "Redistricting Reform: The Voter Empowerment Act").

The Secretary has a clear ministerial duty under the California Constitution, Article II, Section 8, to submit to the voters at the next general election any initiative once local elections officials certify that the requisite number of California voters have signed petitions setting forth the text of such initiative. The Office of the Secretary of State certified Proposition 77 for inclusion on the next ballot after receiving confirmation from local elections officials that more than 950,000 California voters had signed petitions to qualify the initiative for the ballot, and 677,997 were projected by random sample to be valid signatures.

Three days after certifying Proposition 77 for inclusion on the ballot for the next general election, the Office of the Secretary of State was advised for the first time by proponents of the initiative that they had mistakenly formatted their signature petitions using a version of the initiative different in some respects from the version submitted by them to the Attorney General for title and summary.

Notwithstanding this error by the proponents of Proposition 77, and unless this Court orders otherwise, the Secretary believes he has a constitutional obligation to place on the ballot for the November 8, 2005 Special Election the text of Proposition 77 as it appeared on the petitions read and signed by more than 950,000 California voters. By this Cross-complaint, the Secretary seeks this Court's guidance on this matter.

The timing of this Court's decision is critical. As required by Elections Code section 9092 and Government Code section 88006, the public display period for all initiatives that will appear on the November 8 ballot will begin on July 26, 2005 and end on August 15. It is imperative that this Court rule in advance of July 26 so that the Secretary has direction regarding the display of Proposition 77.

**CROSS-COMPLAINT**

Respondent and Cross-complainant Bruce McPherson alleges as follows:

1. Respondent and Cross-complainant Bruce McPherson is the Secretary of State for the State of California. Respondent brings this action for declaratory relief in his official capacity to seek the Court's guidance as to his obligation to the voters of California regarding Proposition 77.

2. On June 10, 2005, the Office of the Secretary of State certified Proposition 77 for inclusion on the next ballot.<sup>1</sup> That certification was accomplished in accordance with Article II, Section 8 of the California Constitution and Elections Code section 9033. Elections Code section 9033 states that once the Office of the Secretary of State has received petitions certified by local elections officials as having been signed by the requisite number of voters, the Office of the Secretary of State shall issue a "certificate" to that effect to all local elections officials.

3. The issuance of the certificate is not discretionary. Once the Office of the Secretary of State has received petitions containing the requisite number of valid signatures from local elections officials, it must qualify the initiative for the next election.

4. As of June 10, 2005, neither the Secretary nor anyone at the Office of the Secretary of State knew or had reason to know that there was any difference between the text of the initiative reviewed by the Attorney General to prepare the title and summary and the text of the initiative used by the proponents of the initiative on their signature petitions.

5. On June 13, 2005, an attorney for the proponents of Proposition 77 met with Undersecretary of State William P. Wood and advised him for the first time regarding a discrepancy between the version of the initiative submitted by the proponents to the Attorney General for title and summary and the version of the initiative printed on the petitions circulated for signature by proponents of the measure. The proponents' attorney acknowledged that due to a clerical mistake by the proponents, the version of the initiative printed on the petitions was different from a (later drafted) version of the initiative submitted to the Attorney General's office for title and summary.

---

<sup>1</sup> Three days later, the Governor announced a special election scheduled for November 8, 2005.

1           6. On June 10, the date the Office of the Secretary of State certified the initiative, neither  
2 the Secretary nor any one else in the Office of the Secretary of State knew or had reason to know of  
3 the mistake made by the proponents of the measure.

4           7. Following the June 13 meeting, the staff of the Office of the Secretary of State reviewed  
5 the facts and election law pertaining to this unprecedented situation and, ultimately, the Secretary  
6 directed Undersecretary Wood to notify the Attorney General and request guidance.

7           8. On Friday, July 1, Undersecretary Wood wrote to Louis Mauro, Senior Assistant  
8 Attorney General, asking "whether the Secretary of State has the authority to make a determination  
9 which version of the text of a measure should be placed before the voters."

10          9. After the end of the working day on Friday, Mauro left a voice mail message for Pam  
11 Giarrizzo, Chief Counsel to the Secretary of State, acknowledging receipt of the letter and advising  
12 that the Attorney General might decline to represent the Office of the Secretary of State in  
13 connection with this dispute.

14          10. On Wednesday, July 6, Mauro, Rick Frank and Jim Humes from the Attorney General's  
15 office met with Undersecretary Wood and Chief Counsel Giarrizzo. Undersecretary Wood asked  
16 whether the Attorney General's office would respond to the question posed in Wood's letter dated  
17 July 1, and whether the Attorney General's office would represent the Office of the Secretary of  
18 State in this matter. The Attorney General's representatives answered no to both questions.

19          11. On Thursday, July 7, the Secretary wrote to Attorney General Lockyer acknowledging  
20 the July 6 meeting between Mauro and the staff of the Office of the Secretary of State, and stating  
21 in part, "I have a constitutional duty to present to the voters of California the measures that have  
22 qualified to appear on the ballot by the signatures of the people. I intend to do so unless directed to  
23 do otherwise by a court." The letter referred to the public display period that commences on July  
24 26 and said, "I believe that any judicial resolution sought by your office should occur  
25 immediately."

26          12. On July 8, the Attorney General's office filed its petition for writ of mandate in the  
27 Sacramento Superior Court. The mandate petition asks the court to order the Secretary to  
28

1 “decertify” Proposition 77, and to omit information regarding Proposition 77 from the November 8  
2 ballot and from the Voter Information Guide that will be published in connection with the election.

3 13. The Attorney General’s legal argument for decertification urges that there are  
4 substantive differences between the version of the initiative submitted for title and summary to the  
5 Attorney General and the version included on the petitions. The Attorney General alleges that the  
6 failure of the proponents to submit the circulated version for title and summary invalidates the  
7 petitions and hence the certification.

8 14. The Secretary has a constitutional duty to present to the voters of California the  
9 measures that have qualified to appear on the ballot by the signatures of the people. The requisite  
10 number of California voters have signed petitions asking that Proposition 77 be placed on the ballot  
11 in the form shown on the petitions. Absent a court order to the contrary, the Secretary has a  
12 constitutional duty to place on the ballot the version of the initiative that was included in the  
13 petitions read and signed by more than 950,000 California voters.

14 15. An actual controversy has arisen and now exists between Attorney General Lockyer and  
15 Secretary McPherson regarding whether Proposition 77 should be included on the November 8  
16 ballot and in the Voter Information Guide and, if so, which version of Proposition 77.

17 16. Attorney General Lockyer contends that the Secretary should not allow any materials  
18 pertaining to Proposition 77 to appear (a) in the Voter Information Guide for the November 8,  
19 2005 Special Statewide Election, or (b) on the ballot for the November 8, 2005 Special Statewide  
20 Election.

21 17. Secretary McPherson contends that:

22 a. Absent a court order to the contrary, he is obligated by law to include  
23 Proposition 77, in the form in which it appeared on the signature petitions, on the ballot for the  
24 November 8, 2005 Special Statewide Election, and include materials relating thereto in the Voter  
25 Information Guide, because the requisite number of California voters signed petitions to put that  
26 version of Proposition 77 on the ballot;

1           b.       He does not have the authority to decide whether the title and summary prepared  
2 by the Attorney General (based on the later draft of Proposition 77) is confusing or misleading  
3 when applied to the (earlier drafted) version of the initiative that appeared on the petitions; and

4           c.       He does not have the authority to determine whether the discrepancies between  
5 the two versions of the initiative are "technical and minor" as argued by the initiative's proponents,  
6 or "substantive and material" as argued by the Attorney General.

7           18. The Secretary seeks a judicial determination of his duties as Secretary of State  
8 regarding Proposition 77 and the upcoming November 8 election.

9           19. Such a declaration is necessary and appropriate at this time in order that the Secretary  
10 may ascertain his legal obligation to the voters of California.

11           WHEREFORE, Respondent and Cross-complainant McPherson prays judgment against  
12 Petitioner and Cross-defendant Lockyer, as follows:

13           1.       For a declaration that:

14           a.       Secretary McPherson is obligated to include Proposition 77, as it appeared on  
15 the petitions signed by California voters, on the ballot for the November 8, 2005  
16 Special Statewide Election, and include materials related thereto in the Voter  
17 Information Guide, because the requisite number of California voters signed  
18 petitions to put that version of Proposition 77 on the ballot,

19           b.       Secretary McPherson does not have the authority to decide whether the title and  
20 summary prepared by the Attorney General (based on the later draft of  
21 Proposition 77) is confusing or misleading when applied to the (earlier drafted)  
22 version of the initiative that appeared on the petitions; and

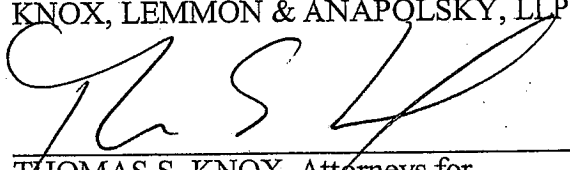
23           c.       Secretary McPherson does not have the authority to determine whether the  
24 discrepancies between the two versions of the initiative are "technical and  
25 minor" as argued by the initiative's proponents, or "substantive and material" as  
26 argued by the Attorney General; and

27           2.       For such other and further relief as the Court may deem just and proper.  
28

1 Dated: July 13 2005.

KNOX, LEMMON & ANAPOLSKY, LLP

2  
3 By:

  
THOMAS S. KNOX, Attorneys for  
Respondent and Cross-complainant  
Bruce McPherson, Secretary of State  
of the State of California

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
KNOX, LEMMON & ANAPOLSKY, LLP  
ONE CAPITOL MALL, SUITE 700, SACRAMENTO, CA 95814  
TELE: (916) 498-9911 FAX: (916) 498-9991



1 **Lockyer v. McPherson**  
2 **CASE NO. 05CS00998**

3  
4 **PROOF OF SERVICE**

5 I am a citizen of the United States, over the age of 18 years, and not a party to or  
6 interested in the within entitled cause. I am an employee of KNOX, LEMMON &  
7 ANAPOLSKY, LLP and my business address is One Capitol Mall, Suite 700, Sacramento, CA  
8 95814. I am readily familiar with the business practice for collection and processing of  
correspondence for mailing with the United States Post Office. On July 13, 2005, I caused to be  
served the attached

9  
10 **CROSS-COMPLAINT FOR DECLARATORY RELIEF**

11 by:

12 ☐ **Mail:** by placing a true copy thereof enclosed in a sealed envelope with first class postage  
thereon fully prepaid in the United States Post Office at Sacramento, California, addressed  
as set forth below:

13 ☐ **Personal Delivery:**

14 ☐ **Express Mail:**

15 ☐ **Facsimile:**

☒ **Electronic Mail**

16 Bill Lockyer  
17 Attorney General of the State of California  
Christopher Krueger  
18 Supervising Deputy Attorney General  
Zackery P. Morazzini  
19 Deputy Attorney General  
20 1300 I Street, Suite 125  
P. O. Box 944255  
21 Sacramento, CA 94244-2550  
Tel: (916) 445-8226/Fax: (916) 324-5567  
22 Christopher.Krueger@doj.ca.gov

*Plaintiff Bill Lockyer, Attorney General  
of the State of California*

23 Linda Cabatic, Deputy Director  
24 CA Dept. of Gen. Svcs/Office of Legal Svcs.  
707 Third Street, 7<sup>th</sup> Floor, Suite 7-330  
25 West Sacramento, CA  
Tel. (916) 376-5085/Fax: (916) 376-5088  
26 Linda.Cabatic@dgs.ca.gov

*Counsel for Defendant Geoff Brandt,  
Acting State Printer with the Office of  
State Publishing*

27 //

28 //

KNOX, LEMMON & ANAPOLSKY, LLP  
ONE CAPITOL MALL, SUITE 700, SACRAMENTO, CA 95814  
TELE: (916) 498-9911 FAX: (916) 498-9991

1 Dan Kolkey  
Rebecca Justice Lazarus  
2 Gibson, Dunn & Crutcher, LLP  
One Montgomery Street, suite 3100  
3 San Francisco, CA 94104  
4 Tel: (415) 393-8240/Fax: (415) 374-8452  
dkolkey@gibsondunn.com  
5

*Counsel for Real Parties in Interest*

6 I declare under penalty of perjury under the laws of the State of California that the  
7 foregoing is true and correct. Executed July 13, 2005, at Sacramento, California.

8   
9 SALLY M. DAY